

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 779

Short Title: Financial Assurance for Certain Development. (Public)

Sponsors: Representative Torbett (Primary Sponsor).

For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Government.

April 11, 2013

1 A BILL TO BE ENTITLED
2 AN ACT TO REQUIRE FINANCIAL ASSURANCE FROM PERSONS BUILDING
3 CERTAIN RETAINING WALLS, CONDUCTING CERTAIN LAND-DISTURBING
4 ACTIVITIES, AND CONSTRUCTING PRIVATE STREETS.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** Article 9 of Chapter 143 of the General Statutes is amended by
7 adding a new section to read as follows:

8 "**§ 143-139.4. Financial assurance for certain retaining systems.**

9 (a) Any person constructing a retaining system greater than five feet in cumulative
10 vertical relief as part of developing more than one subdivided lot, or developing a single lot
11 with the intent to subdivide the lot, shall obtain and file a surety bond with the clerk of superior
12 court in the county in which the retaining system is located. The bond shall be in favor of the
13 future property owners who would be injured by the failure of the retaining system. The bond
14 amount shall be at least equal to the cost to repair the retaining system if the system were to
15 fail. The bond shall remain in force for 10 years after the construction of the retaining system.

16 (b) No local government may issue a permit for a retaining system project that requires
17 a bond under subsection (a) of this section unless the applicant provides evidence of having
18 obtained and filed a bond as required by subsection (a) of this section."

19 **SECTION 2.** Article 4 of Chapter 113A of the General Statutes is amended by
20 adding a new section to read as follows:

21 "**§ 113A-54.3 Financial assurance for establishment of permanent ground cover.**

22 (a) No person shall initiate any land-disturbing activity to develop more than one
23 subdivided lot, or develop a single lot with the intent to subdivide the lot, unless the person
24 establishes financial assurance that will ensure that sufficient funds are available to comply
25 with this Article until permanent ground cover sufficient to restrain erosion has been
26 established and the site has been closed by the Department or local government that administers
27 a local erosion and sedimentation control program approved under G.S. 113A-60.

28 (b) The financial assurance shall be in one of the following forms:

29 (1) A surety performance bond made by a surety bonding company licensed and
30 authorized to do business in North Carolina.

31 (2) A cash deposit in the form of an assignment to the permitting entity of a
32 certificate of deposit with an institution licensed and authorized to do
33 business in North Carolina as security for the bond.

34 (3) A cash deposit in the form of an official bank check drawn in favor of the
35 permitting entity and deposited with same.



1 (4) An irrevocable letter of credit from an institution licensed and authorized to
2 do business in North Carolina deposited with the permitting entity. A letter
3 of credit must be accompanied by a performance guarantee in the amount of
4 one hundred twenty-five percent (125%) of the required surety.

5 (5) Security in a form not listed above as established by rule by the North
6 Carolina Sediment Control Commission.

7 Assets used to meet the financial assurance requirements of this section shall be in a form that
8 will allow the Department or a delegated local program to readily access funds for the purposes
9 set out in this section. Assets used to meet financial assurance requirements of this section shall
10 not be accessible to the person conducting the land-disturbing activity except as approved by
11 the Department or the delegated local program.

12 (c) The financial assurance shall be continuous in nature and shall remain in force until
13 cancelled or released by the Department or delegated local program. Cancellation shall be
14 effectuated only upon 60 days written notice thereof to the Department or delegated local
15 program and the financially responsible party.

16 (d) The amount of financial assurance required shall be calculated as a rate per
17 disturbed acre as determined by the Director of the Division of Energy, Mineral, and Land
18 Resources or the Director's designee and shall to be sufficient to comply with this Article until
19 permanent ground cover sufficient to restrain erosion has been established and the site has been
20 closed by the Department. If the applicant disagrees with the amount determined by the
21 Director or the Director's designee, the applicant may submit to the Director, or the Director's
22 designee in the case of a delegated local program, for consideration, an estimate of costs for
23 installing and maintaining the erosion and sedimentation control measures as shown on the
24 approved plan and costs for establishing permanent ground cover from a third-party contractor
25 to be used as the amount of financial assurance. The estimate shall be provided to the Director
26 or the Director's delegated local program designee within 30 days following the receipt of the
27 Director's or the Director's designee's initial determination. The Director or the Director's
28 delegated local program designee shall notify the applicant within 30 days of receiving the
29 estimate from the third-party contractor of the final determination and the process and
30 conditions used to set the amount of financial assurance.

31 (e) The amount of the required financial assurance may be reduced as permanent
32 ground cover is established on portions of the area of land disturbance. The financial assurance
33 shall be released when the Department or a local government that administers a local erosion
34 and sedimentation control program approved under G.S. 113A-60 determines that permanent
35 ground cover sufficient to restrain erosion has been established.

36 (f) The financial assurance shall be subject to seizure by the Department or local
37 government when uncorrected violations of G.S. 113A-57 continue at a site for over 60 days. If
38 (i) the Department or local government has determined the necessity of seizing the financial
39 assurance and (ii) the Department or local government has given to the person conducting
40 land-disturbing activity both written notice of the violation and a reasonable opportunity to take
41 corrective action, the Department or local government shall initiate proceedings against the
42 financial assurance filed by the applicant. Such proceedings shall be brought in the name of the
43 State of North Carolina or the local government in the case of delegated local programs. In
44 such proceedings, the face amount of the financial assurance, less any amount released by the
45 Department or delegated local program under subsection (e) of this section, shall be treated as
46 liquidated damages. All funds collected as a result of such proceedings shall be placed in a
47 special fund and used by the Department or delegated local program to bring the
48 land-disturbing activity into compliance with G.S. 113A-57. Any funds in excess of the costs of
49 achieving compliance shall be refunded to the applicant. The successful seizure of funds by the
50 Department of a local government under this subsection shall not release persons conducting
51 the land-disturbing activity from their responsibility to comply with the provisions of this

1 Article or any ordinance, rule, or order adopted or issued pursuant to this Article by the
2 Commission or by a local government.

3 (g) State and local governmental agencies, including water or sewer authorities or
4 districts, shall not be subjected to the provisions of this section."

5 **SECTION 3.** G.S. 136-102.6(f) reads as rewritten:

6 "**§ 136-102.6. Compliance of subdivision streets with minimum standards of the Board of**
7 **Transportation required of developers.**

8 ...
9 (f) Prior to entering any agreement or any conveyance with any prospective buyer, the
10 developer and seller shall prepare and sign, and the buyer of the subject real estate shall receive
11 and sign an acknowledgment of receipt of a separate instrument known as the subdivision
12 streets disclosure statement (hereinafter referred to as disclosure statement). Said disclosure
13 statement shall fully and completely disclose the status (whether public or private) of the street
14 upon which the house or lot fronts.

15 (1) Public street. – If the street is designated by the developer and seller as a
16 public street, the developer and seller shall certify that the right-of-way and
17 design of the street has been approved by the Division of Highways, and that
18 the street has been or will be constructed by the developer and seller in
19 accordance with the standards for subdivision streets adopted by the Board
20 of Transportation for acceptance on the highway system.

21 (2) Private street. – If the street is designated by the developer and seller as a
22 private street, the developer and seller shall include in the disclosure
23 statement an explanation of the consequences and responsibility as to
24 maintenance of a private street, and shall fully and accurately disclose the
25 party or parties upon whom responsibility for construction and maintenance
26 of such street or streets shall rest, including the limited duration of the surety
27 bond of the developer and seller, and shall further disclose that the street or
28 streets will not be constructed to minimum standards, sufficient to allow
29 their inclusion on the State highway system for maintenance. The disclosure
30 statement shall contain a duplicate original which shall be given to the
31 buyer. Written acknowledgment of receipt of the disclosure statement by the
32 buyer shall be conclusive proof of the delivery thereof. The developer and
33 seller shall obtain and file a surety bond with the clerk of superior court in
34 the county in which the subdivision is located. The bond shall be in favor of
35 the property owners to be served by the private street. The bond amount
36 shall be at least equal to the projected maintenance costs for the first 10
37 years of the private street's use, as determined by the Division of Highways.
38 The bond must be secured by two or more sureties. The bond shall remain in
39 force for 10 years after the construction of the private street. If any action by
40 the developer and seller reduces the liability of the surety, then the developer
41 and seller shall obtain a replacement surety bond to remain in force for 10
42 years after the date it is obtained."

43 **SECTION 4.** This act becomes effective October 1, 2013.